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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

JEFF NOWINSKI, Plaintiff and Respondent, v. BARBARA MacNEISH, Defendant and Appellant.	B211025 (Los Angeles County Super. Ct. No. SS016954)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gerald Rosenberg, Judge. Affirmed.

Law Office of Jane S. Preece and Jane S. Preece for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Barbara MacNeish (appellant) appeals from the order, issued pursuant to Code of Civil Procedure section 527.6,[1] prohibiting her from harassing Jeff Nowinski (respondent). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant and respondent live in the same apartment building in Santa Monica. On June 30, 2008, respondent filed a request for a restraining order to stop appellant from harassing him and his parents. In his request, he alleged that on June 29, 2008, appellant bumped into him and told him he was "'a real asshole.'" He also alleged that appellant had caused him emotional distress "for years." In an addendum to the request, he alleged: "I am afraid that [appellant] might injure herself and claim that I hurt her, and make a false police report against me. She has told me that she thinks of suicide. She is an admitted alcoholic (attends AA meetings) and has a history of drug use. She has called the police on me already—claiming that 'I looked at her hard.' I did no such thing. I saw her in passing while throwing away my trash in our building. I don't speak to her . . . . Her aggressive behavior toward me has escalated with threat[en]ing gestures, remarks and incidents. I am afraid she is going to vand[alize] my car as well. . . . She has contacted my parents and friends. . . ."

Appellant filed an answer on July 10, 2008, in which she alleged that the events related by respondent simply did not occur and that he had imagined them. She also filed an addendum in which she explained that she and respondent had known each other for at least five years. She stated that they had one date, but denied they ever had a romantic relationship. She claimed that respondent had intermittently harassed and menaced her since 1999. She said that she called the police in 2007 after he looked at her threateningly, issued what seemed to be a challenge to fight, and stuck his hand inside his bathing suit. The police arrived and told her that they would talk to respondent. She

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[1] All further statutory references are to the Code of Civil Procedure.

claimed that the June 29 incident which respondent had described occurred when he approached her in the elevator. She admitted calling him an "asshole" because she was frustrated by his failure to keep away from her. She stated that the request filed by respondent was "speculative, unfounded, and delusional."

At the hearing which took place on July 22, 2008, respondent testified about the June 29 incident, claiming appellant approached him while he was doing laundry. He alleged that appellant had told him several years earlier that she loved him. He claimed he told her that he did not share her feelings, and on one such occasion she became "furious." He said she had called the police and complained about him twice. On one occasion, appellant falsely accused him of looking "at her hard."

Appellant testified that she had called the police twice after a long string of incidents of harassment by respondent. She denied ever telling respondent that she loved him. She admitted that when a sheriff's deputy knocked on her door to serve her with notice of respondent's request for a restraining order, she called the police alleging respondent was banging on her door. The court asked her if she had gone to see who was at the door. She explained she was afraid that it was respondent, so she did not answer the door and called police instead. The court stated, "Ma'am, I have the sense that there's something going on in terms of how you perceive this man, and it seems to me that your reactions are inappropriate. Just, you know, even going to calling the police because there was a banging on your door at 6:45, regardless of the fact of how you may have perceived a prior incident — it just seems inappropriate that you called the police." It then granted a one-year injunction prohibiting appellant from annoying, harassing, contacting, following, threatening or blocking respondent, and ordering her to stay at least 10 feet away from him.

DISCUSSION

On appeal, appellant contends that the court abused its discretion in granting the restraining order because respondent did not prove by clear and convincing evidence that

the order was justified and the court erred in issuing the order based on appellant's calls to the police, which were made for a legitimate purpose. Respondent did not file a brief.

Section 527.6 provides that a temporary restraining order and an injunction prohibiting harassment may be sought when there is harassment, that is, "unlawful violence, a credible threat of violence, or *a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff.*" (Subd. (b), italics added.) "Course of conduct" is further defined as "a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means . . . . Constitutionally protected activity is not included within the meaning of 'course of conduct.'" (Subd. (b)(3).)

The court must find clear and convincing evidence that unlawful harassment exists. (§ 527.6, subd. (d).) If the trial court determines within its sound discretion that a party has met the 'clear and convincing' burden, its determination will not be disturbed on appeal without a showing of a clear abuse of discretion. (*Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 912; *Ensworth v. Mullvain* (1990) 224 Cal.App.3d 1105, 1111, fn. 2.) We review the trial court's finding under the substantial evidence standard, resolving all factual conflicts and questions of credibility in the respondent's favor and drawing all legitimate and reasonable inferences to uphold the judgment. (*Shapiro*, at p. 912; *Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762.) Even if the evidence at the hearing is subject to more than one reasonable interpretation, we may not reweigh the evidence or choose among alternative permissible inferences. (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 630-631.) Thus, we do not substitute our deductions for those of the trial court. (*Shapiro*, at p. 912.)

Appellant admitted that she called respondent an asshole and that she had called the police and complained about him. She denied respondent's remaining allegations of

harassment. The trial court did not find her version of the facts credible. Substantial evidence supports a finding that appellant initiated contact with respondent, who did his level best to avoid her. A reasonable person who was the target of emotional outbursts and false accusations would suffer the requisite emotional distress. The court believed respondent suffered such distress and there was ample evidence to support the issuance of the restraining order. (*Brekke v. Wills* (2005) 125 Cal.App.4th 1400, 1411-1414.)

We are not persuaded by appellant's argument that she is being punished for calling the police, an act that served a legitimate purpose. The court found that she had no valid reason to contact the police to complain about respondent. Unwarranted calls to the authorities to falsely accuse one of misconduct is the essence of harassment.

DISPOSITION

The judgment (order granting restraining order) is affirmed.

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SUZUKAWA, J.

We concur:

EPSTEIN, P.J.

WILLHITE, J.